HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

Chapter VIII, Rule 32(2) (b)
Description of case

W.P. No. 7351 year 2001 (M/S)
Stapal Singh and Inderpal Singh
Versus
State Bank of India and others

A.F.R. (Approved for Reporting)
_____

~~Not approved for reporting~~

Date of decision 13.10.2003

Initials of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 7351 of 2001 (M/S)
(Old No.14495 of 1997)

Satpal Singh and Inderpal
Singh both sons of late Shri Kartar
Singh Jointly carrying on business
under the name and style of
M/s Dalip Singh and Son
of Shri Inderpal Singh by
His constituted Attorney
Shri Satpal Singh son of
Late Shri Kartar Singh
R/o 3, Lyotn Road,
Dehradun ……Petitioner

Versus

1. State bank of India
Constituted under the State
Bank of India Act, 1955, service
To be effected through the Chief
Instructor,
Staff Training Centre, 108-A, Hardwar
Road, Dehradun.
2. Additional District Judge, special Judge, Dehradun.
3. Additional District Magistrate
(Executive) Prescribed Authority
Dehradun. ……..Respondents.

Counsel for the petitioner Sh.K.N Josi and Narain Dutt (Advocate)
Counsel for the respondent Sh. Ashish Kumar Joshi

Dated: -13-10-03

Hon'ble Rajesh Tandon J.

By the present Writ petition under Article 226 of the Constitution of India, the petitioner have challenged the order passed by the Additional district Judge dated 14-10-96 passed in Rent Control Appeal No. 153 of 1995 between State Bank of India Vs. Satpal Singh and others.

Background Facts

Brief facts giving rise to the present Writ Petition are that the petitioner Landlord have filed the present application under Section 21(8) of U.P Act No.13 of 1992 in respect of Municipal No.98 Hardwar Road, Dehradun. It was stated by the petitioners that the respondent. Bank is a tenant of the premises comprising of an area of 10 Bighas at the rate Rs.3,750/- per month. The petitioner have stated that they are entitled for enhancement of 1/12 of the 10% of the market value of the building under tenancy.

Prescribed Authority vide his order dated 19-07-96 has allowed the application and fixed the rent at the rate of Rs. 39,480/- per month.

The respondent has preferred the appeal being appeal No.104 of 1996. Which was allowed by the appellate authority. Present writ petition has been filed against the appellate order allowing the appeal of the respondent, Bank. During the pendency of the appeal the respondent has also approached to the Hob'ble High Court on 7-10-1996, Hon'ble High Court has directed the Bank to deposit the amount at the rate of Rs.10,000/- per month.

I have heard the learned Counsel of the parties Sri S. N. Joshi appearing on behalf of the petitioner Sri Ashish kumar joshi appearing on behalf of the Bank and Standing Counsel for the authorities namely the respondent No2 and 3.

On the rival contentions of the parties following points arise for consideration:-

(1) Enhancement of Rent/market value of the property.

(2) Applicability of section 2(g) of the Act to the pending proceedings.

(3) Whether co-owner can maintain the proceedings.

(4) Section 6992) of the partnership of Act.

(1) **Findings on Enhancement of rent/ market value of the property.**

The petitioners landlord have filed the application under section 21(8) of the Act sating therein to the following effect:

"That O.Ps abovenamed are month to month tanent in premises bearing Municipal No.98, Hardwar Road, Dehradun, comprising an area of 10 bighes more 11 less(particularly described in the schedule hereunder at Rs.3,750/- per month, under the applicants."

"That the applicant have not moved any similar application for enhancement of rend during the past five years."

That in view, the huge amount of taxes and other liabilities which, through the liability of O.ps they refuse to honour, it is expedient in the interest of justice that the applicants are allowed to enhance the rent payable there for to a sum equivalent to 1/12th of 10% of the market value of the building under their tenancy from the commencement of the month of tenancy, following the date of application.

It is, therefore, prayed that the monthly rent payable for the premises detailed in the scheduled he enhanced to $1/12^{th}$ of 10% of

the market value the building. Which comes to Rs. 39483 per month from the commencement of the month of tenancy following the date of application and grant such other relief or reliefs as this learned authority thinks fit and propes in the circumstances of the case."

In para- 11 of the writ petition the petitioner, have stated regarding the report from the govt. approved valuer who has mentioned the property to the tune of 47lack 38 thousand . Pargraphs-11,12 and 13 relates to the amendment of the valuation . the averments of the writ petition are quoted below:-

Paragraph – 11 "That the petitioners obtained the said report from Government approved L.I.C. panal valuer M/s Arvind Architects whose licence No.CA/85/9268 and his valuer license No.CAT/1-3154. The measurements of the land and the buildings were taken by the aforesaid valuer who filed an affidavit as well as detailed report before the trial court, respondent No.3stating therein that on 9-1-90 the value of land and property No.98 Hardwar Raod, Dehradun, was Rs. 47,38,000/- and the present value as on 1-8-93 was Rs 58,90,000/-. A copy of the affidavit of the valuer is annexed and marked as Annexure '3' to his writ petition.

Paragraph-12 "That accordingly the petitioners filed an application for amendment through which the figures Rs.20,00,000/- was sought to be substituted by figure of Rs.47,38,000/- and figures of Rs.16,666=66 was sought to be substituted by figure of Rs.39483/-. A true copy of the said application is annexued and marked as Annexure '4' to this writ petition."

Paragraph – 13 " That after exchange of the objection trail court allowed the amendment vide order dated 30-6-1993.''

Further in para- 24(i) and (ii) following averments have been made in the writ petition. the same are quoted below:-

Paragraph 24-“(i) That while deciding the first point lower appellate court has held that the trial court has committed court has held that the trail court has committed error in assessing value of property on the report of the valuer, and has held the correct value of the property is for which the purchaser is agreeable to purchase the said property. Since there was negotiations for sale/purchase of the property in dispute between the parties for s.20,18,500/- and as such value of the property has wrongly been asserted and cannot be more than Rs.20,18,500/-

(ii) That it is pertinent to mention that respondent No.1 the Bank, did not file any report of their valuer and complied with the orders of the learned trail court obviously because the same came to roughly to the same amount on the same basis.

Paragraph 25- That the lower appellate court has ignored the fact that the application was moved on 9-11-1990 and the case was decided on 15-11-96 had the case been decided earlier the money would have doubled on the market value rate of interest respondent No.2disregarded the law as laid down in rulings reported in the following journals.

(i) 1992(1) ARC 265 State of UP V. Additional District Judge, Saharanpur and others.

(ii) AIR 1993 SC 1332 State of U.P and others V.s Additional District Judge and others

(iii)1989(1) ARC 340 Central Bank of India and others V.II and

(iv) 1992 (2) ARC 180 Smt. Padma Tandon Vdistrict Judge, Allahabad and others.

(v) 1993 (2) ARC 89 State of UP and another V. Nirendra Nath Dixit and others

(vi) 1989 (2) ARC 14 Assistant Commissioner of Sales Tax Bareilly and others Vs. Additional District Judge, Bareilly and others.

(vii)43 (1991) Delhi Law Times 394 Nirmal Jit Arora Vs. Bharat Steel Tubes Ltd.

For reasons which can only be surmised that stated. Facts as reported in 1987 ALR 308 are not similar to the facts hereinabove. Arguments in writing had been filed before the lower appellate court a true copy whereof is filed as Annexure-8 to this writ petition.

The aforesaid paragraphs have been replied in the counter affidavit by the respondent tenant as under:-

Paragraph 12-" *That accordingly the petitioners filed an application for amendment through which the figures rs.20,00,000/- was sought to be substituted by figure of Rs. 47,38,000/- and figure of Rs.16,66=66 was sought to be substituted by figure of Rs.39,483/-. A true copy of the said application is annexed and marked as Annexure '4' to this writ petition.*

Paragraph 14- *"That thereafter additional written statement was filed by respondent No. 1 on 14-7-95.*

Paragraph 25- *"That the lower appellate court ignored the fact that the application was moved on 9-11-90 and the case was decided 15-11—96. Had the case been decided earlier the money would have doubled on the market rate of interest.*

On the other hand counsel for the respondent has relied upon the following case law as mentioned in his written arguments. The same are quoted below:-

Paragraph 3-" *Tat the valuation of the property in question at the time of initiating the case was or Rs. 20,00,000/- and the Learned Appellate Court has considered all the evidences produced by the petitioner and has told that as per the decision given in Mahavir Prasad Vs .Collector and others reported in 1987 ALL P-30 that the Market value of the property depends on the amount which is acceptable to the purchase. It is relevant to mention here that during the pending of the case before Prescribed Authority the deal was started between the parties to sale and purchase the property and vide documentary evidence, it was proved that the both the parties agree to on the amount of Rs. 20.18,500/-. The assessment made by the prescribed authority on the basis of documents produced by the petitioner is totally wrong."*

Paragraph 5- *"That the Appellate Court after considering the judgment passed by the High Court and Apex Court rightly reached on the conclusion that in the present case amendment will apply retrospective. The appellant Court has rightly rely on the case;*

"AIR 1989 SC 1247, AIR 1995 All 303"

Paragraph 6- *"That as per the provision of section 69(2) and (3) of the Partnership Act 1932, no suit to enforce a right arising from a contact shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the register of firm as per partner in the firm. The building was let out on rent by firm M/s Deleep Singh and sons and the firm was not registered. The application for enhancement of rent was moved by the partners of the firm which is not maintainable as per the provision of section 69(2) of the*

partnership Act 1932. The case law in support of the contention was also case before the Appellate Court and here in below:-

AIR 1964 ALL 352 Jagdish Chand Gupta Vs. Bajoriya Traders (1998) 7SCC 184 Rapatakas Brett and Company Ltd. V.s Ganesh Property."

Section 21(8) of UP Act No. 13 (1972) provides for the enhancement of the monthly rent. It writes as under:-

" Nothing in clause (a) of sub-section (1) shall apply to a building let out to the State Government or to local authority or to a public sector corporation or to a recognized educational institution unless the Prescribed Authority is satisfied that the landlord is a person to whom clause (ii) or clause (iv) of the Explanation to sub-section (1) is applicable

Provided that in the case of such a building the District Magistrate may, on the application of the landlord enhance, the monthly rent payable therefore to a sum equivalent to one-twelfth of ten per cent of the market value of the building under tenancy, and the rent so enhanced shall be payable from the commencement of the month of tenancy following the date of the application:

Provided further that a similar application for further enhancement may be made after the expiration of a period of five years from the date of the last order of enhancement.

Counsel for the petitions has stated that in the year 1990 market value of the premises was assessed by the him at about Rs. 20,000,000 (Twenty Lacs) as such the landlord has prayed for enhancement of the rent of the premises to the extent of 1/12 of 10% of the market value of the premises which comes to 16,666.66 per month.

The counsel for the petitioners has relied upon the report of Government approved and L.S.C panal valuer namely M/s Arvind

Architects being licence No. CA/025/9268 valuing the property to the extent of Rs. 47,38000/ as on 1.8.93 and the present value to the extent of 58,90,000 was valued.

During the pendency of the application, the petitioners have amended the prayer to the extent of Rs 47,38000/- instead of 20,00000 and the claim of rent was enhanced to the extent of Rs. 39,403 instead of Rs.16,666.66. The amendment application was allowed on 30.6.1993. The respondent Bank has also filed additional written statement.

Sri. A. Singhal who is a approved valuer has stated as under:-

(i) That the deponent is architect since 1971 and Govt. Approved valuer and LIC Panel valuer sincer 1986. The deponents licence number is CA/85/9268 and his valuer's licence No is Cat I-3154. The deponent has on 4-7-93,22-7-93,23-7-93 taken measurements of land, buildings and made drwings of property no. 98 Hardwar Road, Dehradun, and is, therefore, full by acquainted with the facts deposed to here under.

(ii) "That the deponent was asked to prepare the valuation of property as on 9.1.90, as also its present valuation. The entire property comprises of land measuring 5305. 12 sq.mts. with 4 blocks of building variously named by the owners for convenience sake.

The deponent has prepared three sheets of plans showing the land and buildings and detailed the construction in four abstracts of costs which he has arrived at on the basis of U.P.P.W.D schedule of rates effective Ist Oct., 1989 giving the allowance to depreciation since its construction in 1965. The deponent has valued the land as per circle rates prevailing on 9.1.1990.

(iii) That valuation of land and property 98, Haridwar Raod, Dehradun as on 9.1.1990 calculated on the above basis was Rs.47,38,000/- thought is open market value could be more.

(iv) That ever since 9.1.1990 U.P., PWD Schedule of rates and the circle rate have been revised. Present market value of the land and building on the basis of revised rates comes to Rs. 58,90,000/-.

During the pendency of the case the respondent No. 1 has also sought the amendment to the extent that after the enactment of U.P. Act No. 5 of 1995 the provision of Act No.13 of 1972 shall not be applicable as the rent is more than Rs.2000/- The amendment was allowed.

On behalf of the Counsel for the Bank it was stated that the tenancy has commenced on the basis of lease deed at 7.5.1986 by M/s Dalip Singh and sons and as such the application on behalf of the petitioner was not maintainable. It was stated that the Bank was offered by a letter dated 7.12.92 to purchase the property for Rs. 210,8500/-. In paragraph 9 of the writ petition following statement was made:-

"That during pendency of the aforesaid proceedings respondent No.1 had written a letter on 7.12.1992 through which approval was accorded to purchase the property for s. 20,18,500/- (Rs. Twenty Lacs Eighteen thousand five hundred.

So far as valuation part is concerned as will appear from the order passed by the prescribed Authority tht on 10.6.93 that parties were given opportunity to prove the valuation by taking report from the valuer. The Petitioner has fixed the valuation report according to the valuer Sri Arvind Singhal. No report was filed by the tenant. The report of the valuer of the petitioner was also taken into consideration as will appear from the Judgment of the prescribed Autority to the falling effect:-

U;k;ky; d vkn'k fnukd 0-06-1993 d vuqikyu e Hkou Lokeh }kjk iLrqr eY;kdu vk[;k ,o cY;qyj d 'kiFk Ik d

voykdu l fofnr g fd i'uxr lEifRr dk eY;kdu tkjh 1990 dk Hkou fuek.k d fy; mRRkj izn'k lkoZtfud fuek.k foHkkx dh izpfyr njk vkj Hkfe d eY; gr fu/kkfjr lfdy jV dk vk/kkj ekudj lEifRr dk eY;kdu nkuk eY;k dk lfEefyr djd fd;k x;k gA lEifRr d eY;kdu e l mud 24 o"k iwjku fuek.k dk 1-5 ifr'kr @ ifro"k d vuqlkj fuek.k dju d mijkUr lifRr dk dy ckt kjh eY; 47]38]000]@& :Ik; gk x;k gA bl eY;kdu vk[;k d fo:} foi{kh }kjk lEifRr d fu;e Hkfe ,o vkdf.kr eY;kdu d fy; n'kkb njk d lc/k e dkbZ vkifRr iLrqr ugh dh xbZ g rFkk eY;kdu d fy; fuek.k dh njk ,o Hkfe dh nj 'kklu }kjk fu/kkfjr njk d vuqlkj gA eY;kdu drk }kjk lEifRr dh inf'kr ckt kjh dher 47]38]000@& :i; Lohdkj dh tkrh gA vf/kfu;e dh /kkjk 21¼8½ e fn; ikfo/kkuk d vuqlkj lifRr d eY; d 10 ifr'kr d 12o Hkkx dk ekfld fdjk; d :i e Lohdkj fd;k tkuk gA vr% 47"38"000@& :i; dk 10 ifr'kr 4]73]000@& o bldk 12ok Hkkx 39]438 ¼ vFkkr 39]480:i; ½ vkrk gA lEifRr dk ekfld fdjk;k 39]480&00 : Lohdkj fd;k tkrk gA

Thus there is no material on record to hold that the valuation report submitted by the petitioners is wrong or the market value as submitted by the value of the petitioner are not correct. As will appear from the averments in the writ petition and the Counter Affidavit, that the valuation report filed by the petitioner remained unrebutted.

It is well settled that there is difference between the market value of the property and the sale price, as the property in the tenancy, is to be sold on the price given by the tenant.

The prescribed authority therefore has rightly calculated the rent in the following manner:-

vf/kfu;e dh /kkjk 21¼8½ e fn;s x;s ikfo/kkuk d vuqlkj lifRr d eY; d 10 ifr'kr d 12o Hkkx dk ekfld fdjk;s d :Ik e Lohdkj fd;k tkuk gA vr% 47]38]000@ :I;s dk 10 ifr'kr 4]73]000@& o bldk 12ok Hkkx 39]438&00 ¼vFkkr 39]480@& :0½ vkrk gA lEifRr dk ekfld fdjk;k 39]480&00 :I;s Lohdkj fd;k tkrk gA

The appellate authority on the basis of the offer made by the respondent No. 1 has calculated the market value to the extent of 20 lakh 10 thousand five hundred rupees and as such has not agreed to the extent of R.s 47, 38000/-

The aforesaid findings have been recorded on the basis of conjectures, as neither the appellate authority has considered the valuation report of the approved valuer nor any other valuer at the instance of the respondent No. 1 ha given his report.

In Smt. Padma Tandon V. District Judge, Allahabad and others reported in 1992(2) ARC page 180. It has been held that while fixing the valuation market should be the criteria and not on the letting value or municipal assessment. It has been held as under:-

"The rate fixed by the District Finance Officer for the market value of the land at Rs.100 per Sq. Meter as the minimum and Rs. 125 per Sq. Meter award. According to the learned Judge the market price fixed by the District Finance Officer was for the purposes of stamp duty. But the same price would not be available where the building is under tenancy and in occupation of the State and possession of which would not be available within a reasonable time after the sale. Thus no willing purchaser would offer the aforesaid price fixed for the purposes of registration. In my opinion, the learned Judge was not correct in ignoring the value of the land as fixed for the purposes of stamp duty by the Government itself. The aforesaid rates of the State

Government have both outer limit and the inner limit to cover all such contingencies and there may be some further special reasons from deviating from the aforesaid valuation. But there seems to half of the value as fixed by the State Government which was the circle rate prevailing at the relevant time. The very purpose of the enactment for enhancement of rent of the building occupied by the Government would frustrate for fixation of market value in case the consideration is, that, as the possession of the buildings is not readily available, the willing purchase would pay very low price. The provision of Section 21(1) (a) of the Act are not available to the landlord and, as such, he is adequately compensated by reasonable rent possessed on the basis of market value. In my opinion, the market value for the purpose of Section 21 (8) of the Act has to be assessed irrespective of the consideration as to what value the willing purchaser would offer in case the possession of the building is not readily available. The consideration of timely possession would not be applicable in the present case for termination of market value."

"*in my opinion, the interest of landlord of such buildings have been adequately taken care by making suitable provisions and providing for the assessment of rent on the basis of market value and not on the basis of letting value or annual rental value or on the basis of Municipal assessment. The learned Judge grossly erred in taking into consideration the fact that he disputed building would remain under the tenancy and this aspect would completely diminish the value of the building and the prospective purchaser of the property would not invest any sum."*

Further, guide line has been provided for enhancement of the rent in Deepak Kumar Tyagi and others V. Vth Additional District Judge, Saharanpur reported in 1994 (1) , ARC page-510. The guide line is reproduced as under:-

"Where no other data are available, two methods are adopted for determining the market value of a building:-

(i) The rend normally realized if let, or if not let, the expected rent and capitalizing it by number of years' purchase of the annual rent derived from the property; and

(ii) By valuing the land and the building separately and adding the value of one to the other.

"The first method cannot be adopted din the case where the rent of the building has to be enhanced on the basis of the market value. It is then the last method i.e. by ascertaining the value of the land and the cost of the construction on it. The last method has been taken as very weak method because some times it does not represent the real market value of the property. In a case, where the building on the ground floor is used for commercial purpose and first floor for residential purpose and basement for different purpose each one has its own independent value. If a willing purchaser goes to purchase shops or commercial portion of the building he will pay a higher price and for residential portion on the first floor he will pay a higher price. The value of the basement will be differently assessed. In Ram Shekhar and another V. Chairman, City Improvement Board. Mysore, AIR 1957 Mysore 57, it was held that the valuation of land with building thereon by valuing the land and the building separately and adding the value of one to the other does not furnish the reliable estimate of the property."

"In a case, however, there is no other possible method to assess the market value of the property the Court is left with no other method except to ascertain the market value of the property taking into consideration the value of the land and the cost of the construction existing on such land."

Similar, view has been taken 2000(1) ARC page no.-431 in Punjab and Sindh Bank Vs. VII the ADJ, Bulandshahar and others. After relaying upon the judgment of Apex Court it has been hold as under:-

"It is well settled in law that the value of the land on which the building is situated, is to be included in the market value of the building while determining the market value under the aforesaid provisio. A reference in this regard may be made to the decision in Central Bank of India and others, V. IInd Additional District Judge, Jhansi and others, 1989 (1) ARC 340 (SC); State of Uttar Pradesh and others V. VIIth Additional District Judge, Saharanpur and others 1992 (2) ARC 571 (SC); State of Uttar Pradesh and others ARC 265 and State of Uttar Pradesh V. Roop Kishore Tandon and others, 1987 (2) ARC 359.

Undoubtedly, determination of valuation of the building has to take place taking into consideration the value of the land also. The value of the land as held by the Apex Court in 1992 (2) ARC page-571 in State of U.P. and others Vs. XII the Additional District Judge, Saharanpur and others. It has been held as under:-

"*After giving our anxious consideration to the facts and circumstances of the case, it appears to us that in the definition of building under Section 3(i) of the Act, there is no express exclusion of the value of the land on which the building stands. In the absence of such express exclusion, he land being intrinsically inseparable from the building standing thereon, the value of the land and the value of the structure or building should be taken into consideration and in our view the land on which the building stands together with the building or structure constitute one composite unit. It may be indicated that he value of two similar buildings or structure standing on similar parcel of land my differ substantially on account of*

locational advantage of the site in question. The difference of valuation of land because of such locational advantage creeps into the valuable than the other although from the structural point of view, both the buildings are identical. In the aforesaid circumstances, the determination of valuation of the building by taking into consideration the value of illegal and improper. In any case, the definition of "building" under the Act clearly shows that the building thereunder means roof structure including the land underneath the said structure. Inclusive part of the definition only elate to the land appurtenant to such building and not to the land underneath the roof structure."

(2)**Findings on Applicability of Section 2(g) of the Act to the pending proceedings**

It has been argued by the Counsel for the respondent that since the application under section 21(8) of the Act is outside the perview of the act after amendment was made under section 2(1)(g) of the Act by incorporating the figure as Rs.2000/- to be outside the perview of the Act.

In order to as certain the intention of the legislature while incorporating section 2 (g) of the Act it is necessary to incorporate section 2(g), of the Act. It reads as under:-

"Any building, whose monthly rent exceeds two thousand rupees."

The controversy as to whether Section 2(g) as stated aforesaid is prospective or retrospective came up for interpretation in a Division Bench decision of the Allahabad High Court in Champa Devi (supra) and another 2002 (1), ARC page- 192 where reliance was placed on the judgment of Apex Court in M/s Ambalal Sarabhai Enterprises Ltd. Vs. M/s Amrit Lal and Co. and others reported in 2001 SCFBRC page 484, the division Bench has held as under:

Following question of law, on reference by a learned Single, Judge has come up for consideration before this Bench:

"Whether clause (g) to Section 2 of the U.P Urban Buildings Regulation of Letting, Rent and Eviction) Act, (herein after referred to as Act by Section 2 of U.P. Act No. 5 of 1995 will effect the proceedings pending on the date of enforcement of U.P Act No.5 of 1995?".

The learned counsel appearing for the parties agree and submit that the question referred by the learned Single Judge has been conclusively answered Sarabhai Enterprises Ltd. V. M/s Amrit Lal and Co. and Anr., reported in 2001 SCFBRC 484, and in the light of this decision, the answer to the question has to be in negative.

Accordingly, the answer to the question referred would be that clause (g) to Section 2 of the U.P Urban Buildings (Regulation of Letting, Rent and Eviction) act, 1972, inserted in the Act by Section 2 of U.P Act No.5 of 1995, will not affect the proceedings pending on the date of enforcement of U.P Act No. 5 of 1995.)

The Apex Court in the case (supra) has observed as under with regard to accrued right after referring S.6 of the General clause Act. It reads as under:

"In case where Section 6 is not applicable, the Courts have to scrutinize and find, whether a person under a repealed statute has any vested right. In case he had, then pending proceedings would be saved. However, in cases where Section 6 is applicable, it is not merely a vested right but all those covered under various sub-clauses from (a) to (e) of Section 6. We have already clarified right and privileges under it is limited to those which is ''acquired' and 'accrued'. In such cases pending proceedings it to be continued as if the statute has not been repealed."

"In view of the aforesaid legal principle emerging, we come to the conclusion since proceeding for the eviction of the tenant was pending when repealing act came into operation, Section 6 of the General Clauses Act would be applicable in the present case. As it is landlord's accued right in terms of section 6.Sub-section © of Section 6 refers to "any right" which may not be limited as a vested right but is limited to be an accued right. The words 'any right accrued'' in Section 6© is wide enough to include landlord's right to evict a tenant in case proceeding was pending when repeal came in. thus a pending proceeding before the Rent Controller for the eviction of a tenant on the date when the repealing Act came into force would not be affected by the repealing state and will be continued and concluded in accordance with the law as existed under the repealed statute."

"In view of the aforesaid findings we conclude, by recording our findings on the question posed earlier by holding.

(1) A landlord or tenant are relegated to seek their rights and remedies under the common law once the protection given to a tenant under the Rent Act is withdrawn, except in cases where section 6 of the General Clauses Act, 1897 is applicable;

(2) A ground of eviction based on illegal sub-letting under proviso (b) to Section 14 of the Rent Act would not constitute to be a vested right of a landlord, but it would be a right and privilege accrued within the meaning of Section 6 (c) of the General Clauses Act in a matter if proceedings for eviction is pending;

(3) When tenant has no vested right under a Rent Act having only protective right, withdrawal of such protection would not cover on a landlord a vested right to evict a tenant

under Rent Act except where sub-clause (c) of Section 6 of the General Clauses act is applicable.

"In view of these findings we hold landlord has a right under the repealed Rent Act by virtue of section 6 (c) of ht General Clauses Act, which would have save the pending proceedings before the Rent Controller, which may continue to be proceeded with as if repealed Act is still in force."

In Central Bank of India, Kanpur Nagar Vs. VI th Additional District and Sessions Judge, Kanpur Nagar and others, ARC 1997(1) page No.317 it has been held that proceedings pending under Section 21 (8) of the Act will not be affected by virtue of Section 6(C) to 6(e) of the Act. The observations of the Court are given below:-

"It is evident from the provisions quoted above that the landlord of a building let out to the State Government or to any other authority or body mentioned in sub-section (8) of Section 21 has no right, unlike the landlord of other categories of buildings to seek release of the building on the ground of his bonafide personal requirement a right recognized by clause (a) of Section 21(1) of the Ac. But the proviso to sub-section (8) gives a right to such landlord to seek enhancement a rent payable for such building to sum equivalent to one-twelth of 10% of the market value of the building under tenancy and it makes the enhanced rent ""payable from the commencement of the month of tenancy following the date of application". The landlord of such building can avail himself off the right to enhanced rent after expiration of the period of every five years from the date of last order of enhancement as visualized by the second proviso to section 21(8) of the Act. The right available to a landlord under the provision aforesaid is a special statutory right in the nature of "Property right" acquired by setting the law into motion albeit at the initial stage it is mere right to apply which may be called

an inchoate right. The right to seek enhancement of rent under the proviso crosses the domain of a "mere right to take advantage" of the provisions of the Act and enters the realm of a "right accrued" or "right acquired" under the Act immediately upon the law being set into motion and once the law is set in motion by moving an application before appropriate authority, the right to enhanced rent becomes a " vested right" or "right acquired" or "right accrued" under the existing statute and it cannot be taken away by a subsequent amendment in the existing statute unless the amendment is, expressly or impliedly, given retrospective effect. Keeping in view the provisions of section 6 of the U.P General Clauses Act it may be stated as a rule of law, that if once a statutory right comes in the realm of a "right acquired" or right accrued", normally it carries with it the remedy for its enhancement unless the right itself is taken by the Amending/Repealing Act by giving it retrospective operation. It can even be asserted independently of the Statute under which it was acquired but an alternative remedy for its enforcement has to be provided.

It cannot be gainsaid that as a result of insertion of clause (g) in Section 2(1) which exempts certain clause of buildings from the operation of the Act, the building let out on monthly rent exceeding Rs. 2,000 ceased to be governed by the Act with effect from 26-09-1994. In a sense the Act stands repealed and statutory rights and liabilities of landlord and tenants of such buildings stood abrogated subject, of course, to principles embodied in Section 6 of the U.P. General Clauses Act, 1904.

Clauses (c) and (e) of Section 6 of the U.P General Clauses Act, 1904 provide that, unless different intention appears, the repeal shall not-

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed ; or

(e) affect any remedy; or any investigation, or legal proceeding commenced before he repealing Act shall have come into operation in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid."

And any such remedy may be enforced and any such investigation or legal proceeding may be continued and concluded. And any such penalty, forfeiture or punishment imposed if repealing Act had not been passed."

In Satye Deo Singh V. State Transport Appellate Tribunal and others, 1996 (1) JCLR 97, this Court held that the right to preferential treatment in the matter of grant of permit by way of renewal as recognized by the proviso to clause (b) of Section 58 (2) of the Old Motor Vehicles Act, 1939 could be acquired by moving an application for renewal of permit under the Old Act. As to the effect of repeal on pending proceedings this Court held as under;-

"What is unaffected by the appeal of a statute is a right acquired or accrued under it and not a mere " hope or expectation of", or liberty to apply for acquiring the right. A right to apply for renewal and get preferential treatment under Section 58 of the Old Act was a mere right to take advantage of the enactment and therefore, without any act done by an individual permit holder towards availing himself of that right, it cannot properly be deemed a "right accrued". In Gujrat Electricity Board V. Shanti Lal, AIR 1969 SC 239, a right to purchase an electricity undertaking on expiration of its period of licence by giving two years prior notice conferred by original Section 7 of the Electricity Act, 1910 was held

to be a right accruing after notice of option. In Abbot V. Ministry of Land 1895 AC 425 (PC), the option given to a grantee to make additional purchases of Crown Land on fulfillment of certain conditions under the provisions of the Statute could not, it was held, be taken as an accrued right under the repealed statute before the exercise of the opinion. Simolarly, in Reynold Vs. A.G Cornoha Sotia, (1896 AC 420 (PC), it was held that a privilege to get an extention of a licence under an enactment is not an accrued right and no application can be filed after the repeal of the enactment for renewal of the license. On the basis of the above authorities, I am of the considered view that the right to preferential treatment in the matter of grant of permit by way of renewal as recognized by clause (b) of the proviso to Section 58 (2) of the Old Act would not accrue not could it be said to have been acquired under the Old Act, if the application for renewal had not been made under the Act. Since the applications for renewal of permit in these writ petitions were admittedly moved after the enforcement of the new Act, the provisions of clause (c) of Section 6 of the General Clauses Act cannot be pressed into service to support the contention advanced by the learned Counsel appearing for the petitioner. [See-Director of Public Works V.Hopo Sand, (1961)2 All ER 72 (PC); Abbot of Ministry of Land, 1895 AC 425 (PC)431; Principles of Statutory Interpretation (5th Edn. Pp.388 -91) by Justice G.P Singh, Former Chief Justice, M.P. High Court].

The matter was taken to the Supreme Court by way of Special leave. Approving of the view taken by this Court in case of Satya Deo Singh (supra) the Hon'ble Supreme Court has held as under:-

"There is a distinction between right acquired or accrued, and privilege, hope and expectation to get a right, as rightly pointed out

by the High Court in the impugned judgment. A right to apply for renewal and to get a favourable order would not be deemed to be a right accrued unless a some positive acts are done before repeal of Act 4 of 1939 or corresponding law to secure that right of renewal. In Gujrat Electricity Board V. shanty Lal, AIR 1969 SC 239, this Court had pointed out that before Section 71 of the Electricity Supply Act was amended, the appellant had issued a notice under Section 7 thereof, exercising the option to purchase the undertaking. It was held that a right to purchase the electrical undertaking which had accrued to the Electricity Board was saved by Section 6 of the G.C. Act.

So if no action under the Repealed Act was set in motion before July 1,1989, by a valid application for renewal of a permit, there was no right acquired or accrued to pursue the remedy under the Act. The privilege to obtain renewal of a permit is not an accrued right ----------"(emphasis supplied). [Gujrat Singh Etc. (supra), JT 1986 (8) SC 356 At p-378]".

In my opinion, landlord's right to apply for enhancement of rent under the proviso to Section 21(8) of the Act in the instant case ceased to be a mere "inchoate right" and it became a "vested right'' or "right acquired" as soon as the law was set in motion for availing of the right given to the landlord under the provisio. It partook the character of a "property right" being a "right acquired" or "right accrued" much before 26-09-1994. Therefore, the proceeding would continue to be governed by the Principal Act by virtue of Section 6 of the U.P General Clauses Act as if the U.P Act No. 5 of 1995 had not come into force in that there is nothing in the Amending Act which may arrest the operation of clauses (c) and (e) of Section 6 of the U.P General Clauses Act.

Conclusions deducible from the observations aforesaid may be summed up as under:-

(1) Effect of clause (g) of Section 2(1) of the Act as inserted by Section 2 of the U.P Act No. 5 of 1995 is that the buildings whose monthly rent exeeds two thousand rupees have been exempted from the application of the Act and the Act in relation to such buildings stands repealed or obliterated, as if it had never been passed, but the right, if any, acquired by the landlord before insertion of clause (g) in Section 2(1) as also remedy for enforcement of the right so acquired under the Act would be saved, by virtue of Section 6 of the U.P General Clauses Act, 1994, in the absence of anything to the contrary contained in the Amending Act No. 5 of 1995:

(2) The provisions of sub-section (8) of section 21 of the Act confers a right and provided a remedy as well as for enforcement of the right. It is an admixture of the two. Mere right to apply for enforcement of rent under the proviso is not doubt and " vested right" or "right acquired" once the law is set in motion by moving valid application for enhancement of rent and the enhanced rent is payable from the commencement of the month of tenancy following the date of the application. Such " vested right" or "right acquired" under the proviso is in the nature of "property right".

(3) Once the right under the proviso to Section 21 (8) of the Act becomes " vested right" or "right acquired" or "right accrued", it would survive along with remedy by virtue of Clauses (C) and (e) of Section 6 of the U.P General Clauses Act, 1904, notwithstanding the building being exempted from

the purview of the Act as a result of insertion of clause (g) of Section 2(1) thereof an therefore, pending proceedings for enhancement of rent under the proviso would not lapse and they would be decided as if clause (g)has not been inserted in Section 2(1) of the Act in as much as there is nothing in the U.P Urban buildings (Regulation of Letting, Rent and Eviction) (Amendment) Ordinance, 1994 or in the repealing Act as it stood before its amendment by Ordinance and the Act aforestated. Section 4 of the U.P Act No. 5 of 1995 provides for repeal of the Ordinance and saves the acts done or the action taken under the Principal Act as amended by Ordinance. It does not relate to any act done action taken under the Principal Act as it stood before its amendment by Ordinance. In other words nothing in U.P Act NO. 5 of 1995 divests the landlord of his right already acquired under the proviso to Section 21 (8) of the Act by setting the Law into motion by means of a void application before the relevant date, viz; 26-9-1994. Such proceedings already commenced would be concluded and decided as if clause (g) has not been inserted in Section 2(1) of the Act.

In case of Atma Ram Mittal Vs. Ishwar Singh Punia 1988 S.C.F.B.R.C page No. 549, it has been held by the Apex Court as under:-

"In Ram Saroop Rai V. Lilavati, (1980) 3 SCC 452 : 1980 ARC 466 (SC) Krishna Iyer, J, has explained the Section 2(2) of the U.P. Act as follows:

" The legislature found that rent control law has a chilling effect on new building construction, and so, to encourage more building operation, amended the statue to release, from the shackle of legislative restriction, 'new constructions' for a period of ten years. So much so, a landlord who had let out his new building could recover possession without impediment if he institute such proceedings within ten years of completion".

"It is well-settled that no man should suffer because of the fault of the Court or delay in the procedure. Broom has stated the maxim" actus curial neminem gravabit"—An Act of Court shall prejudice no man. Therefore, having regard to the time normally consumed for adjudication, the 10 years exemption or holiday from the application of the Rent Act would become illusory, if the suit has to be filed within that time and be disposed of finally. It is common knowledge that unless a suit is instituted soon after the date of letting it would never be disposed of within 10 years and even then within that time it may not be disposed of. That ill make the 10 years of holidays from the Rent act illusory and provide no incentive to the landlords to build new house to solve problem of shortages of houses. The purpose of legislation would thus be defeated. Purposive interpretation in a social amelioration legislation is an imperative irrespective of anything else."

In the case of Gaya Prasad Vs. Pradeep Srivastava 2001(1) ARC page No.-353 of the Apex Court and after relying upon the judgment of SC in Rameshwar 1992 (supra) 2 SCC 623 held that right of the party crystallizes on the date of filing the application. The observations are quoted below:-

"We cannot forget that while considering the bonafide of the need of the landlord the crucial date is the date of petition. In Ramesh Kumar V. Kesho Ram, 1992 Suppl. (2) SCC 623: 1992 SCFBRC 322, a two Judge Bench of this Court (M.N Venkatachalia, J., as he then was, and N.M. Kasliwal, J.) pointed out that the normal rule is that rights and obligations of the parties are to be determined as they were when the lis commenced and the only exception is that the Court is not precluded from moulding the reliefs appropriately in consideration of subsequent events provided such events had an impact on those rights and obligations. What the learned Chief Justice observed therein is this:

"The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact of law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the Court is not precluded from taking a 'cautious cognizance' of the subsequent chage of fact and law to mould the relief."

"This court reiterated the same principle in Kamleshwat Prasad V. Pradumanju Agarwal, 1997(4) SCC 413: 1997 (1) ARC 627, that the crucial date normally is the date of filing the petition. In that case, a two-Judge Bench (K. Ramaswamy and G.B Pattanaik, JJ.) has held that even the subsequent event of death of the landlord who wanted to start a business iln the tenanted premises is not sufficient to dislodge the bonafide need established by him earlier. This is what Pattanaik, J. has observed for the Banch:

"This apart, the fact that the landlord needed the premises in question for starting a business which fact has been found by the Appellate Authority, in the eye of law, it must be that on the day of

application for eviction which is the crucial date, the tenant incurred the liability of being evicted from the premises. Even if the landlord died during the pendency of the writ petition in the High Court the bonafide need cannot be said to have lapsed a the business in question can be carried on by his widow or any other son."

In Agarwal Automobiles (M/s) Vs. II nd Additional District Judge, Allahabad and others2002 (2), ARC 58 it has been held that the amended provision of U.P. Act No. 13 of 1972 which came into existence only in the year 1995 when the aforesaid proceedings were pending; will have no effect

"*A question has arisen as to whether the amendment by which Section 2(g) , Which provided that if the monthly rent of a building is more than Rs.2,000/- then it would not be covered by the provision of U.P Act No. 13 of 1972 as prospective or retrospective . This controversy has been decided by a Division Bench of this Court in the case of Champa Devi (Smt.) and anther V. Rent control and Eviction Officer(Ist), Allahabad and another, reported in 2001 SCFBRC 484, has held that clause(g) to section 2 of the U.P Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, will not affect the proceedings pending on the date of enforcement of U.P Act NO. 5 of 1995. In this view of the matter, the amended provision of U.P Act No. 13 of 1972, which came into existence only in the year 1995 when the aforesaid proceedings were pending, will have no affect……..…….".*

Thus in my opinion the view taken by the appellate Court that to that rule in view of the amendment made in section 2(g) of the Act the proceedings under section 21(8) is not maintainable cannot be allowed to stand. It will have no effect on pending proceedings. The prescribed authority therefore has rightly come to the ocnclusions

that UP Act 5 of 1995 has no relevance to the pending proceedings as the application was filed as back as on 8th may 1990.

(3)Findings as to Whether Co-owner can maintain the proceedings.

The appellate authority has also allowed the appeal on the ground that other co-owners have not been impleaded as party to the proceedings. The view is wholly incorrect as in view of the Judgment of the Apex Court in 1976 (2) SC Sri Ram Pasricha V. Jagannath page no. 2335 it has been held that every co-owner owners every part of the composite property. The observations are quoted below:-

"Jurisprudentially it is not correct to say that a co-owner of a property is not its owner. He owns every part of the composite property along with others and it cannot be said that he is only a part owner or a fractional owner of the property. The position ill change only when partition takes place. It is, therefore, not possible to accept the submission that the plaintiff who is admittedly the landlord and co-owner of the premises is not the owner of the premises within the meaning of Section 13 (1) (f). It is not necessary to establish that the plaintiff is the only owner of the property being at the same time the acknowledged landlord of the defendants."

It has been held in Kanta Udharam Jagasia V. C.K.S. Rao 1998(1) SCC Page No. 403 that one co-owner can maintain the suit. It has been held as under:-

"We do not think it is necessary to reiterate that a co-owner, In the absence of any objection from other co-owners, can maintain a petition for eviction against a tenant."

The same view has been taken in 2003 (5) SCC page No.150. The observations of the Apex Court are quoted below:-

"The law as to co-owner is well settled. Where any property is held by several co-owners, each co-owner has interest in every inch of

the common property, but his interest is qualified and limited by similar interest of the other co-owners.''

In 1987(1) ARC Gopal Das V. Ist Additional District Judge, Varanasi and others page 281 after relying upon the Judgment of Apex Court in Sri Ram Pasricha, Vs. Jagannath and others AIR 1976 SC page -2335, it has been held as under:-

"In Rang Nath V. state of U.P. and others (supra) one of us (B.N Sapru, J) after relying upon the decision of the Supreme Court in Shri Ram Pasricha V. Jagannath and others, AIR 1976 SC 2335 and Smt. Kanta Goel V. B.P Pathak and others, AIR 1977 SC 1599, has held that one co-owner can bring an action for eviction of the tenant, and it is not necessary to implead all the co-owners in such proceedings."

In view of these decisions, there can, therefore, be little doubt as to the maintainability of the action for eviction brought by one co-owner without impleading the other co-owners. The view taken in Devi Charan's case (supra) cannot be said to have laid down the correct law and it is over-ruled. The view taken in Ranga Nath's case (supra) is correct and we reiterate the same."

(4)Findings on Effect of section 69(2) of the partnership of Act.

After relying upon the judgment of the Apex Court in Malabar Fisherises Co. V CIT, 1979 vol 120 STC 49 it has been held in Chhetriya Sri Gandhi Ashram, Meerut V. IInd Additional District Judge, Meerut and others (1998) ARC 373 that order XXX of the

code of civil procedure provides that the partnership firm is not a distinct legal entity and the partnership property in law belong to all the partners of the firm as the partners have a joint or common interest in such assists. The observations are quoted below:

"The learned Counsel for the petitioner placed reliance on a judgment of the Hon'ble Supreme Court in Malabar Fisheries Co. V. C.I.T. 1979 Vol. 120 ITR 49. That was a case in which development rebate was sought to be withdrawn as after the dissolution of the firm, it assets were distributed between the partners. A question was raised whether the firm could be said to have transferred the assets to its partners. In this connection, a question arose whether a partnership firm was a legal person and what was the relationship between the firm and its partners. It was held that a partnership firm is not a distinct legal entity and the partnership property in law belongs to all the partners have a joint or common interest in such assets and, therefore, when on the dissolution of a firm, the assets were distributed amongs the partners, there was no transfer in the sense of any extinguishment of the firm rights in the partnership assets."

"Reliance is also placed on another judgment of the Supreme Court in Duli chand Laxminarayan V. CIT, AIR 1956 SC 35, in which a question arose whether a partnership firm was a person and could enter into a partnership with another firm or Hindu divided family or individual. It was held that a partnership firm is not a legal person and cannot enter itno partnership."

"The learned Counsel for the respondents on the other hand placed reliance on a judgment of the Assam High Court in Salig Ram Rai V. Abdul Gani, AIR 1953 Assam 206, in which it was held that if the partners collectively, that is to say as a firm, enter into a contract of lease, then they are the landlords and the firm is the

lessor, each partner action as the agent of the other in law and therefore while issuing a notice under Section 106 of Transfer of Property Act, it was not necessary that the identity of the partners should be disclosed."

"Initiating a proceeding by or against a partnership firm is a matter, of procedure as observed by the Hon'ble Supreme Court in Malabar Fisheries the Rules of the Code. There is no illegality in the same procedure is adopted in proceedings under Section 21(1) (a) of the Act, by a partnership firm, making an application through a partner. In my view, therefore, the petition could not be said to have been illegally filed in the name of the firm and in any case such a technical objection cannot be raised at such a late stage and by showering surprise time on the other side."

"As regards the question that a release order under Section 21(1)(a) can be made only in favour of a legal person, the same does not have any merit in view of what has been discussed above. ***When the petition has been filed in the name of a firm, it has to be treated as a petition by all the partners constituting the firm and it is the need or requirement of those partners that has to be looked into and entertained while with a petition under Section 21 (a).*** *It may again be emphasized that in this case the requirement set up for seeking eviction f the petitioner was not the requirement of any individual partner or a member of his family independently of the individual partner or a member of his family independently of the firm. The property in suit was not an asset of the firm and the requirement that was set up for seeking the eviction of the petitioner was for the business requirement of the firm i.e, the partners. It, therefore, cannot be said that the requirement that was set up was not of any legal person. It was the requirement of the partners, who were legal persons and who were carrying on business under a firm name and require the property in question for the purpose under a firm*

name and require the property in question of the purpose of the business. These contentions, therefore, have no force and are hereby rejected."

Coming to the argument regarding Section 69 of the partnership of Act. It reads as under:-

"No suit to enforce a right arising from a contract shall be instituted in any court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.

"It has been held in 2000(3) SCC Page No.250 in order to attract section 69(2) of the partnership act it must be arising out of a contract. The nature of the right in the present case will be a passing of action as held by the Apex Court (supra). The Apex Court has held as under:-

"The English precedent referred to in para.17, which has been not followed in part but followed in part in drafting Section 69(2) is the one contained by the Registration of Business Names Act, 1961. Section 7 of that Act refers to penalties for default in registration. As stated in the Report, the penalty part of that Act has not been introduced in India but the provisions of section 8 creating disabilities in the way of the firm in default is adopted. Section 8 of the above English Act is relevant and it speaks of the right of that defaulter under or arising out of any contract made or entered into by or on behalf of such defaulter in relation to the business furnished "(see Halsbury Statutes, 3rd Edn. Vol. 37, p.867)"

The above provision clearly signifies that the right that is sought to be enforced by the unregistered firm and which is barred must be a right arising out of a contract with a third party defendant in respect of the firm's business transactions.

Further, Section 69(2) is not attracted to any and every contract referred to in the plaint as the source of title to an asset owned by the firm. If the plaint referred to such a contract it could only be as a historical fact. For example if the plaint filed by the unregistered firm refers to the source of the firms titled to a motor car and states that the plaintiff has purchased and received a motor car from a foreign buyer under a contract and that the defendant has unauthorizedly removed it from the plaintiff firms possession it is clear that the relief for possession against the defendant in the suit does not arise from any contract which the defendant entered into in the course of the plaintiff firms business with the defendant but is based on the alleged unauthorized removal of the vehicle from the plaintiff firms custody by the defendant. In such a situation, the fact that the unregistered firm has purchased the vehicle from somebody else under a contract has absolutely no bearing on the right of the firm to sue the defendant for possession of the vehicle. Such a suit would be maintainable and section 69(2) would not be a bar, even if the firm is unregistered on the date of suit the possession in the present case is not different.

A perusal of he aforesaid judgment of the Apex Court it will establish that the petitioners have not claimed any right arising out of the contract but it being a passing of action in a common law given under the provisions of section 21(8) of the Act and therefore, he provision of the section 69(2) of the partnership Act will not come in the way of the petitioner in claiming the rent in respect of accommodation at the market rent as they can not get it vacated under Section 21(1) (a) of the Act. The petitioners can claim the enhanced rent this alone. The protection given to the petitioners cannot in any way debar them from claiming the admissible rent provided by the beneficial legislation.

CONCLUSIONS

The petitioners therefore have established his right to get enhancement of rent under Section 21(8) of the Act No. 13 of 1972.

It has also come on the record that the respondent has already handed over the possession to the landlord on 23-6-2000 as will appear from the supplementary affidavit on record.

Landlord has also not availed the enhancement of rent as contained under section 21(8) of the Act as the application is pending since 1990. Since the date of filing of the application Market value has increased number of times. Proviso to section 21(8) of the Act reads as under:-

"*Provided further that a similar application for further enhancement may be made after the expiration of a period of five years from the date of the last order of enhancement.*"

The view of the aforesaid facts and circumstances of the case, no purpose will be achieved by remanding the case to the court below as there is not report of the valuer on the record except filed by the petitioner where complete details have been mentioned. Since purchase price cannot be criteria to determine the valuation, and there is no other evidence available on the record to prove the market value of the property therefore the valuation submitted by the petitioner cannot be disbelieved. The prescribed authority has rightly come to the conclusion that monthy rent will be Rs. 39, 480 per month payable from 9.11.90.

It is well settled that Section 21(1) (a) of U.P Act no 13 of 72 with regard to bonafide requirement of the landlord being not available to the landlord, Section 21(8) of the Act alone is the remedy available to the landlord. The conduct of the Bank while denying the title of the owner and disputing the maintainability of the application shows the intention of the Bank not to fulfill the obligation in

accordance with the statutory provisions of the Act. Certainly this fact entitles the landlord to claim interest on the arrears of rent at the market rate but looking to the fact that the tenant has already vacated the premises, the interest part on arrears of rent is waived.

Consequently, writ petition succeeds and is allowed. The order passed by the appellate authority dated 14-10-1996 is quashed. The order passed by the Prescribed Authority dated 19-7-1996 is restored. There will be no order as to costs.

(Rajesh Tandon, J.)

Dated: 13-10-2003